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Human rights situation in Palestine and other occupied Arab territories

Written statement* submitted by the United Nations Watch, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[24 August 2018]

* Issued as received, in the language(s) of submission only.

Hamas, the High Commissioner and Special Rapporteur Michael Lynk

In response to Israel's acts of self-defense on the Gaza border to prevent armed Hamas terrorists from storming the fence and heeding the calls of Hamas leaders to massacre Israelis—in their own words, to "tear out their hearts from their bodies,"[1] and "draw the map of return in blood"[2]—UN human rights officials rushed to condemn only Israel for "excessive" and "disproportionate" force against supposedly "unarmed demonstrators," while completely ignoring Hamas's role in, and responsibility for, the violence.

On May 18, 2018, the UN Human Rights Council held a special session on the violence, and adopted a one-sided resolution condemning only Israel, and failing to even mention Hamas.[3] The resolution presumed Israel guilty of violations of international humanitarian law, international human rights law, and war crimes, and created an international Commission of Inquiry into Israel's actions.

Statements by High Commissioner Zeid Hussein (May 18)[4] and Palestine Rapporteur Michael Lynk (May 15 and 18)[5] were replete with inaccuracies and misrepresentations. Notably missing was any condemnation of Hamas for its blatant violations of International Law, and incitement to violence and mass murder; acknowledgement of Hamas's responsibility for the terrible plight of Gazans; or any call for accountability from Hamas.

The two main misrepresentations by Zeid and Lynk are addressed below:

1. Gaza demonstrators were "unarmed" and "non-violent"

Many of the so-called protesters were armed members of Hamas's military wing who engaged in terrorism along the border, including throwing Molotov cocktails, catapulting flaming kites into Israeli territory, stone-throwing, attempting to cut through the border fence to infiltrate Israel, and firing at Israeli soldiers.[6] The flaming kites have burned over 7,000 acres of agricultural and ecological land, and threatened the welfare of Israeli civilians, including children plating at kindergarten.[7]

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1 Arsen Ostrovsky (@Ostrov_A), TWITTER (May 15, 2018, 1:09 AM), https://twitter.com/Ostrov_A/status/996301534718844928.

2 David M. Halbfinger, Isabel Kershner and Declan Walsh, *Israel Kills Dozens at Gaza Border as U.S. Embassy Opens in Jerusalem*, NEW YORK TIMES (May 14, 2018), https://www.nytimes.com/2018/05/14/world/middleeast/gaza-protests-palestinians-us-embassy.html.

3 Violations of international law in the context of large-scale civilian protests in the Occupied Palestinian Territory, including East Jerusalem, Human Rights Council Twenty-Eighth special session U.N. Doc. A/HRC/Res/S-28/1 (May 18, 2018).

4 Statement by UN High Commissioner for Human Rights Zeid Ra'ad al-Hussein, Special Session of the Human Rights Council on the deteriorating human rights situation in the Occupied Palestinian Territory, including East Jerusalem (May 18, 2018), http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23100&LangID=E.

5 Statement by Special Rapporteur for Palestine Michael Lynk, 28th Special Session of Human Rights Council, UN Web TV (May 18, 2018), http://webtv.un.org/meetings-events/treaty-bodies/www.un.org/news/watch/1st-meeting-28th-special-session-of-human-rights-council/5786571192001/?term=&sort=date; UN human rights expert condemns horrific violence in Gaza, Office of the High Commissioner (May 15, 2018), http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23087&LangID=E.

6 Jonathan D. Halevi, *'Great Return March' Incorporates Hamas Warfare Tactics*, ALGEMEINER (May 2, 2018), https://www.algemeiner.com/2018/05/02/great-return-march-incorporates-hamas-warfare-tactics/.

7 Almog Ben Zikri, Israel Battles More Blazes in Gaza-border Communities as Incendiary Balloons Continue, HAARETZ (July 25, 2018), https://www.haaretz.com/israel-news/.premium-israel-battles-more-blazes-as-incendiary-balloons-continue-1.6314546; Flaming balloon from Gaza lands in preschool near children at play, TIMES OF ISRAEL (July 17, 2018), https://www.timesofisrael.com/flaming-balloon-from-gaza-lands-in-preschool-near-children-at-play/.

Just before the May 14 protests, Hamas leaders posted to social media maps of the quickest routes to Israeli towns and villages. The maps were widely shared on social media by Gazans intent on invading those communities with statements like: "Murder, slaughter, burn and never show them any mercy;" and "Pounce on them with knives."[8]

Even Hamas's co-founder Mahmoud al-Zahhar admitted to Al-Jazeera that calling the border protests "peaceful resistance" is "deceiving the public."[9] Hamas also admitted that 50 out of the 62 people killed on May 14 were its own operatives.[10] Most of the casualties have since been identified as members of terrorist groups.

2. "Lethal force" is permitted only in cases of "imminent threat" of death or serious injury

Rather than applying International Humanitarian Law (IHL) to Israel's use of force, Zeid and Lynk incorrectly apply a human rights law enforcement paradigm. However, Israel's conflict with Hamas is an "armed conflict" under International Law. Thus, the violent attacks on the border fence trigger Israel's right to self-defense under IHL.

The right to self-defense is enshrined in Article 51 of the UN Charter,[11] and does not require that a state wait to be attacked and suffer casualties before it can fight back.[12] In addition, Palestinian rioters directly participating in hostilities are not entitled to the protection afforded to civilians. Article 51(3) of the First Additional Protocol to the Geneva Conventions (1949) permits attacks on civilians "for such time as they take direct part in hostilities."[13] Therefore, engaging in violent acts intended to breach Israel's border fence with Gaza and/or cause harm on the Israeli side of the fence would cause rioters to lose protected civilian status. Furthermore, under IHL, the concept of proportionality is not about the numbers (which side had more deaths), as Zeid outrageously suggested. Rather, it is a prospective consideration based on the military commander's assessment of whether the expected civilian casualties will be excessive in relation to the anticipated military gain. In fact, IHL accepts the possibility of civilian casualties.[14] The above statements completely ignore the very real threat to the lives of Israelis civilians by Hamas terrorists seeking to breach the Gaza border fence intent on infiltrating nearby Israeli communities and murdering Israelis.

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8 *Id.*

9 *Amid Antisemitic and "Death to Israel" Chants, Hamas Political Bureau Chairman Ismail Haniyeh Vows: We Shall Never Recognize Israel – Scenes from Gaza "Return March,"* Clip #6570, MEMRI (May 11, 2018), https://www.memri.org/tv/senior-hamas-official-mahmoud-zahhar-on-gaza-protests-this-is-not-peaceful-resistance.

10 *Hamas Political Bureau Member Salah al-Bardawil: 50 of the Martyrs Killed in Gaza Were From Hamas, 12 Regular People*, MEMRI (May 16, 2018), https://www.memri.org/tv/hamas-politburo-member-bardawil-fifty-martyrs-were-hamas-members.

11 Article 51, UN Charter, http://www.un.org/en/sections/un-charter/chapter-vii/.

12 David Kretzmer, *The Inherent Right to Self-Defence and Proportionality in Jus Ad Bellum*, 24 EJIL 1, 235-282, 248 (2013).

13 Article 51(3) of Protocol Additional to the Geneva Conventions of 12 Aug. 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I); Commentary of 1987 to Article 51(3), Protection of the Civilian Population, https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=5E5142B6BA102B45C12563CD00434741.

14 Article 57 of Protocol I to the Geneva Conventions of 12 Aug. 1949.